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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,526	06/13/2007	Bertrand Arbogast	129293	2967
25944	7590	05/08/2009		
OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850			EXAMINER MUKHOPADHYAY, BHASKAR	
			ART UNIT 4132	PAPER NUMBER
			MAIL DATE 05/08/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/591,526

**Applicant(s)**

ARBOGAST, BERTRAND

**Examiner**

BHASKAR MUKHOPADHYAY

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Preliminary Amendment of 12 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)
- Paper No(s)/Mail Date 11/17/2008
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 1 is objected to because of the following informality:
2. It appears in claim 1 that the word "meets" is a misspelling of the word "meats". Appropriate correction is required.

### **Specification**

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d) (1) and MPEP § 608.01(o). Correction of the following is required: Regarding Claim 1, hot packaging the sauce in a clean container at a temperature of above 80<sup>0</sup> C is mentioned, whereas the Specification refers to "about 80<sup>0</sup> C". Appropriate correction is required.

### **Claim Rejections - 35 USC § 112**

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out

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and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-4 are rejected under 35 U.S.C.112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Regarding claim 1, the preamble, "A method for producing dishes served in sauce containing food," in conjunction with an absence of method steps to be performed that relate to producing dishes with food renders the claim indefinite. It is unclear whether the claim is to a method of producing dishes in sauce or only of producing sauce.

7. Regarding claim 1, line 2, it is unclear what is meant by the phrase, "whereby preserving them". It is unclear whether "them" refers to sauce or to food.

8. Regarding claim 1, line 2, the phrase "such as vegetables, fruits, dairy products and meats..." renders the claim indefinite because it is unclear whether the limitations following the phrase are necessarily part of the claimed invention. See MPEP § 2173.05(d).

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9. Regarding claim 1, line 6, the phrase "such as salt, pepper, spices, hot peppers, and with animal and/or vegetable fat" ..., " renders the claim indefinite because it is unclear whether the limitations following the phrase are necessarily part of the claimed invention. See MPEP § 2173.05(d).

### **Claim Rejections - 35 USC § 103**

10. The following is a quotation of 35 U.S.C.103 (a) which forms the basis for all obviousness rejections set forth in this Office action:

11. (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual enquiries set forth in *Graham v. John Deere Co.* , 383 U.S. 1,148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S. C. 103(a) are summarized as follows:

a. Determining the scope and contents of the prior art.

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- b. Ascertaining the differences between the prior art and the claims at issue.
- c. Resolving the level of ordinary skill in the pertinent art.
- d. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Visee WO 01/ 30181 A1 in view of Bruno, jr et al., USPAT 4560564 and in view of "Food preparation and cooking" (Ann Bulleid, in "Food Preparation and Cooking", 2<sup>nd</sup> edition, p 136, 1996 cited as NPL in the attached PTO-892), (henceforth, "Food Preparation and Cooking").

14. Regarding claim 1, Visee teaches a method for producing cheese sauce without adding preservatives and/or coloring agents and without sterilization, characterized in that it consists of:

--- proceeding with cooking in a pot, fresh ingredients mixed with seasoning products such as salt, pepper, spices, hot peppers and with animal and/or vegetable fat (page 2, lines 29-33 and page 5, lines 24-33 e.g. processing salts, cheese or cheese constituents etc.) for a duration of 20 minutes up to 6 hours at a minimum temperature of 80<sup>0</sup> C ( page 3, lines 19-23 e.g. to a temperature higher than 70<sup>0</sup> C, in particular in the range from 85 to 110<sup>0</sup> C for homogeneous mixing and page 5, lines 2-6, e.g. which explains preferably at

least 70-110<sup>0</sup> C and more particularly to 110<sup>0</sup> C for no longer than 30 minutes, more preferentially no longer than approximately 10 minutes, during mixing).

---- hot packaging the thereby obtained sauce in a clean container at a temperature above 80<sup>0</sup> C , the packages being closed immediately after filling; and -----rapidly cooling said packages filled with sauce, for a duration less than two hours depending on the volume of the later, at a temperature less than 10<sup>0</sup> C ( page 6, lines 10- 20 e.g. temperature down to a temp. of 25<sup>0</sup> C or less ., in particular a temp. of approximately 0 to 10<sup>0</sup> C, e.g. 24-48 hours, optionally in a cold store and grating at approximately 8<sup>0</sup> C ).

15. Vissee's cooking step includes a substep of cooking for the claimed duration and time, as set forth above, notwithstanding that other cooking steps are also contemplated. Vissee does not expressly teach about hot packaging the thereby obtained sauce in a clean container at a temperature above 80<sup>0</sup> C, the packages being closed immediately after filling. Vissee teaches cooking at 85-110<sup>0</sup> C, wherein the finally cooked sauce is as much as approximately 75<sup>0</sup> C. For the highest temperature preparation, this temperature of approximately 75<sup>0</sup> C can be viewed as extending to as much as or slightly more than 80<sup>0</sup> C. In the event that Vissee cannot be said to teach this limitation, Vissee nevertheless suggests that the finally cooked sauce could exceed 80<sup>0</sup> C, since the cooking temperatures are disclosed as exceeding this temperature and since the final temperature would be expected to constitute temperatures closer to the cooking temperatures were time for cooling prior to packaging to be shortened. It would have been obvious

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to one of ordinary skill in the art at the time of the invention to start packaging at temperatures closer to cooking temperatures to avoid waiting for cooling so as to facilitate processing. While Visee teaches that packaging into a container may be desired, Visee does not teach hot-packaging. Visee also does not teach rapid cooling for a duration of less than two hours to a temperature less than  $10^0$  C.

16. Bruno, jr et al. teaches about the hot packaging the thereby obtained sauce in a clean container at a temperature above  $80^0$  C, the packages being closed immediately after filling ( col. 7 line 68 to col. 8 lines 1-10; e.g. Packed in hermetically sealed containers by a hot-fill-hold technique. In hot-fill-hold processing the container is filled with product at a temperature of at least  $82^0$  C).

17. "Food Preparation and Cooking" teaches about rapid cooling for a duration less than two hours to lower the temperature less than  $10^0$  C ( in page 136, in Method, "Essential knowledge" section which is highlighted, 3<sup>rd</sup> and 4<sup>th</sup> bullets respectively, e.g. Sauces must be rapidly cooled within 90 minutes before refrigeration).

18. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the teaching of Bruno ,jr , et al. related to hot packaging procedure using hot-fill hold technique in the packaging of Visee. The motivation to hot-fill package is that Visee teaches that hot product may effectively and optionally be packaged prior to storage. It would have been obvious to one of



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ordinary skill in the art at the time of the invention to rapidly cool the resulting packaged food to the claimed cooling temperature as suggested by " Food Preparation and Cooking" in Visee in view of Bruno, Jr. The motivation by one of ordinary skill in the art is to provide conditions suitable for no chance of contamination using hot-fill hold technique and rapid cooling method to minimize the time window for the favorable growth condition for bacteria which is in the danger zone between 5-63<sup>0</sup> C to get a predictable result at the time of the invention.

19. Regarding claim 2, Visee, in view of Bruno, jr, et al. and in view of "Food Preparation and Cooking" discloses a method for cooling at a temperature between 0<sup>0</sup>C and -25 <sup>0</sup>C ( page 6, lines 20- 23 e.g. at a temperature of approximately -18 to -30 <sup>0</sup> C) to achieve two-fold benefits from cooling condition: a) it creates a vacuum inside the container; and b) the partial vacuum helps to preserve the sauce in a better condition without changing the flavor and by preventing growth of microorganisms

20. Regarding claims 3, and 4, Visee, in view of Bruno, et al. and in view of "Food preparation and cooking" teaches the tolerable and predictable range of cooking temperature in the pot is between 95 <sup>0</sup> C and 105<sup>0</sup> C (page 3, lines 20-25; page 8, lines 19-21) since Visee teaches this claim limitation.

### **Conclusion**

21. Any inquiry concerning the communication or earlier communications from the examiner should be directed to Chaska Mukhopadhyay whose telephone number is (571)-270-1139.

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22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL LAVILLA can be reached on (571)-272-1539.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B.M./

Bhaskar Mukhopadhyay  
Patent Examiner, Art Unit 4132  
April 28, 2009

**/Michael La Villa/  
Michael La Villa  
Supervisory Patent Examiner, Art Unit 4132  
6 May 2009**